

Narayana and anr. Vs. State

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Court : Karnataka

Decided On : Feb-23-1998

Reported in : 1998CriLJ3675

Judge : M.F. Saldanha and ;B.N. Mallikarjuna, JJ.

Appeal No. : Crl. Appeal No. 41/1996

Appellant : Narayana and anr.

Respondent : State

Advocate for Def. : B.R. Nanjundaiah, SPP

Advocate for Pet/Ap. : J.V. Hulsoor, Amicus Curiae

Disposition : Petition dismissed

Judgement :

1. This appeal has been filed by the original accused Nos. 1 and 2 in Sessions Case No. 69/1992 from the Court of the Principal Sessions Judge, Mysore. The appellants have assailed the judgment and order dated 21-9-1995 whereunder they Have been convicted of the offence of having committed the murder of one Nagendra @ Kumar at about 9.30 P.M. on 12-2-1992 at a smashana near the Bamboo Bazaar at Mysore. The accused are alleged to have taken the deceased Kumara with them initially for purposes of consuming drinks and after that they are

alleged to have kicked the deceased on the chest and the abdomen and accused No. 1 is alleged to have caused bleeding injuries to the deceased by cutting his testicles and the second accused is alleged to have strangled him with a kerchief and a ladi. The police were informed on the next morning that the body was lying at that spot and in the course of the inquest that was being conducted PW. 2 Chandrakala identified the body as that of her brother. Incidentally, this PW. 2 Chandrakala is the wife of accused No. 1 and she informed the police that accused Nos. 1 and 2 had taken her brother the previous night for drinking and that at about 1 A.M. the first accused came to the house of his sister PW. 5 Saraswathi and knocked at the door. PW. 2 states that she heard her husband accused No. 1 telling PW. 5 that he had finished the deceased Kumar and that she could live peacefully with any one of her choice. PW. 2 is alleged to have questioned the accused No. 1 as to where her brother Kumar was and he is supposed to have abused her and threatened to kill her. PW. 2 in turn informed PW. 3 Mahadeva and was told that the matter could be sorted out in the morning. The accused No. 1 who had come home late at night left in the morning and did not come back. PW. 2 went to the police station the next morning and was told that a dead body was found in the smashana. She went there and identified the deceased. The accused were apprehended on 16-2-92 near Bal Bhavan of Banni Mantap. On interrogation of the first accused, he is alleged to have produced the blade which, according to the prosecution Was used in the commission of the offence. On completion of the investigation, the two accused were charge sheeted and put up for trial. The learned Sessions Judge found both the accused guilty of the offence of murder and convicted them and sentenced them to rigorous imprisonment for life and a fine of Rs. 5000/- each in default six months rigorous imprisonment. The present appeal assails the conviction and sentence awarded to the two appellants.

2. Since this is a jail appeal, this Court appointed learned Advocate Mr. J.V. Hulsoor to appear as amicus curiae on behalf of the appellants. We have heard Mr. Hulsoor as also the learned S.P.P. in considerable detail and we have also had occasion to thoroughly review the entire record of this case. We need to mention straightway that there are no eye-witnesses in this case and neither is there any direct evidence. It is essentially a case on circumstantial evidence. Mr.

Hulsoor's main line of attack has been that the learned trial Judge has been rather prejudiced or biased by what the prosecution alleges as the motive for the crime and he submits that the evidence in support of this aspect of the prosecution case is not at all conclusive. Secondly, what he submits is that even assuming that the prosecution has succeeded in establishing that there was some illicit connection between the deceased Kumar and PW. 5 that this would not provide sufficient motivation for the accused to commit the murder and that too, in the manner in which it has taken place. Undoubtedly, the deceased had left his wife and was supposed to have been carrying on with PW. 5 who incidentally is the sister of accused No. 1. The prosecution case is that accused No. 1 had reacted very strongly to the misconduct of the deceased who is alleged to have been openly carrying on with his sister and accused No. 2 was also in a sense an aggrieved party because the deceased had virtually deserted his wife who was the cousin of accused No. 2. The prosecution theory is that both accused No. 1 and accused No. 2 were extremely annoyed with the deceased for what he had been doing and that they joined together and decided to finish him. The prosecution allegation goes to the extent of demonstrating that the animus of the accused as against the deceased was extremely high because of the sexual misconduct of the deceased and that this was the reason why apart from killing him, they had mutilated his genitals.

3. Mr. Hulsoor submitted that this may be true, as emerges from the evidence of PW. 5 who has not disputed the fact that an affair was going on between her and the deceased, but he submits that the prosecution evidence indicates that this had been carrying on for quite some time. His contention is that nothing has been brought on record to indicate that some serious development took place shortly before 12-2-1992 which would have infuriated accused Nos. 1 and 2 to a point that would motivate them to kill the deceased. His submission is that the prosecution has blown up the incident out of all proportion in order to establish an interconnection and that the Court should not accept this aspect of the case. On the other hand, the learned S.P.P. contended that this circumstance which is fully established, provides a very strong motive as to why the two accused decided to join together as also to finish off the deceased.

4. Once we have on record the admission of PW. 5 that the affair was going on between her and the deceased, it is almost automatic that it would provide a very strong basis for hostility or more importantly revenge vis-a-vis both accused Nos. 1 and 2. At any levels of Indian society it would be extremely difficult to accept that a brother would react kindly to a situation where a married man deserts his wife and starts an affair with his sister. Sadly enough, in this case PW. 5 herself was in distress because she in turn had been deserted though we do not know whether it was because of this particular illicit connection. Be that as it may, the Court is required to bow down to the level at which the incident has taken place and at that level of society, given the mental make-up of accused No. 1 we have no hesitation in accepting the correctness of the finding of the trial Court that it was this affair which had been going on for long enough and which had worked on the mind of accused No. 1 to such an extent that it virtually drove him to the desperate act of eliminating the deceased. We have earlier indicated that accused No. 2 was similarly aggrieved because the deceased had deserted or rather discarded his wife who incidentally happens to be the cousin sister of accused No. 2. It is obvious therefore that both the accused made common cause and the prosecution is right when attention is focussed on the fact that quite apart from a total assault on the deceased which ended in his being strangled, that particular emphasis was laid on mutilating his genitals which clearly indicates that the fury was in relation to some sexual activity. Viewed at from this angle, these circumstance very strongly connect the accused with the crime but they also provide an equally strong motive for its commission.

5. It is on record that the accused were absconding from the morning of 13-2-92 up to 16-2-92 when they were apprehended by the police. Mr. Hulsoor submitted that PW. 2 like any other wife, obviously disapproved of her husband's drinking habits and that even if she went to the police station on the morning of 13-2-92 it was obviously in order to complain against him rather than anything else. He submits that it was a mere coincidence that the body happened to be found the next morning and that since the deceased had left in the company of accused No. 1 and accused No. 2 the previous night that the suspicion of the police had automatically turned towards them. He submits that in this background it was most natural to expect that they would run away out of fear of being implicated and he

submitted that the Supreme Court has in a number of cases very clearly held that merely because accused persons run away from the scene or area of offence or from their normal residence, that this should not be treated as a circumstance of guilt as they could often want to avoid being implicated and it could equally be out of a sense of fear. It is difficult to accept Mr. Hulsoor' argument for only one reason that the evidence of PW. 2 and PW. 5 has hardly been challenged and both of them are very clear about accused No. 1 having come late on the night of 12-2-92 and having made a statement that the deceased has been finished off and that PW. 5 is free to live a normal life in future. We need to look at this evidence in the background of the fact that it has come on record that these persons were in the habit of consuming alcohol almost every night and there is evidence to indicate that on the night of 12-2-92 they had gone precisely for this purpose. They had taken the deceased with them and there is ample evidence that they had consumed alcohol from the condition in which accused No. 1 was, which is referred to by PW. 2 and PW. 5 but more importantly, by the post mortem evidence which indicates that the deceased was not only smelling of alcohol but that it was found that he had consumed a fair quantity. We refer to this aspect of the matter for only one reason that the consumption of alcohol has the unfortunate result of reducing the levels of discretion in individuals and it is quite obvious to us that even if normally one would not have expected an accused person to talk about having killed somebody that the result of a few drinks inside the system had obviously led him to overlook the consequences and to boast about what he had done and to tell his sister that her problems were now over. It is in this background that these types of evidence will have to be evaluated. These circumstances have been proved and they constitute one more link in the chain of circumstances against the accused.

6. We have earlier dealt with the aspect of the accused having absconded immediately after the commission of the offence and remaining away until they were arrested on 16-2-92 by the police. Had there been any other valid reason for their absence, they ought to have stated it in their Section 313 statement. No explanation is forthcoming and in the background of the fact that the disappearance coincides with the commission of the offence and its being reported to the police, we have no hesitation in holding that it is an incriminating

circumstance against the accused which has rightly been held proved against them.

7. There is one other circumstance which we prefer to refer to separately which in our considered view is an extremely strong circumstance which incriminates both accused Nos. 1 and 2. There is unimpeachable evidence on record that on the night of 12-2-92 the deceased was taken by these two accused persons on the pretext of having a drink. What is material is that they were only accused No. 1 and accused No. 2 who took the deceased and nobody else. We refer to this aspect of the matter because Mr. Hulsoor submitted that having regard to the life style of the deceased that there could have been many other persons who were annoyed with him or furthermore, that since admittedly these persons had gone to a lonely place to drink, that anything could have happened there and the deceased could have met with his death at the hands of some persons other than the accused and he submitted that merely because the deceased was last seen in the company of the two accused would not be sufficient to conclusively hold that they and they alone were responsible for the death. What is material in this case is that the death has taken place in the early part of the night as is established from the post mortem notes and this would indicate that it was a very short while after the deceased left in the company of the accused. The law with regard to the aspect of last seen together postulates that if the deceased was last seen in the company of the accused and is found dead very shortly thereafter that the inference arises that it was the accused who was responsible for the death though this is a rebuttable presumption and in such instances the onus lies on the accused to put forward a sufficiently cogent explanation for purposes of satisfying the Court that the accused parted with the company of the deceased before the death had taken place and that they were not responsible for it. In the absence of a valid explanation, the presumption binds the accused and in the present instance the accused have not offered any explanation valid or otherwise for what happened to the deceased who had left on the previous evening along with the two of them and was last seen alive in their company. Again, we do not view this circumstance in isolation but we have decided to fit it into the jigsaw puzzle of the prosecution case as the last bit and not an initial one because we had examined the entire picture dehors this circumstance and then put it into complete the picture or the chain.

8. The prosecution alleges that after their arrest accused No. 1 produced a blade and this blade is sought to be connected with the mutilation of the genitals of the deceased which according to the doctor had been done with a blade. Mr. Hulsoor submitted to us that the blade was obviously planted by the police and in support thereof, his contention was that the incident took place on the night of 12-2-92 and that four full days had elapsed before the accused were arrested. He submitted that even if the accused had no opportunity to change their clothes that it would be absurd for anybody to contend that accused No. 1 would have been going around for four days with a sharp object such as a blade and that too, the very one which was used in the course of a crime. He points out that the blade did not have any bloodstains and that therefore, it is very clear that it has been planted on the accused No. 1 in order to implicate him. While we do agree that the blade was not bloodstained and that it could therefore not be directly connected with the offence, the fact remains that some of the injuries were caused by a blade and that there is enough evidence on record to indicate that these accused were involved in the crime and in this background, the recovery of the blade would be a circumstance that goes against the accused. Why accused No. 1 would have retained the blade in his right pocket for that length of time is undoubtedly a strange circumstance but having regard to the fact that a blade is a very light and a small instrument, there is every possibility that he could have even overlooked its presence. Again, Mr. Hulsoor argued that since it is clear that the accused had run away immediately after the commission of the offence that it is significant that their clothes were not bloodstained nor were any bloodstained clothes recovered at their instance. We need to observe in passing that this was a case in which the deceased had been kicked and assaulted and strangulated and none of these activities caused any bleeding; the doctor has opined that the injuries to the genitals was obviously inflicted after the earlier ones and was post mortem. In any event, that activity would have resulted in very little bleeding and that explains why no bloodstains were found on the clothing of the accused.

9. We would only in passing deal with the defence taken because Mr. Hulsoor did refer to it. The case put to P.W. 2 who strangely enough has implicated her own husband was that she was a person of loose moral character and that she was responsible for the elimination of Kumar and furthermore, that having regard to her

other activities that she falsely implicated her own husband and Accused No. 2 in order to get them out of the way. Not only has this suggestion been denied but we are firmly of the view that it is too far fetched and it does not fit in with the general scheme of what has happened. While the theory advanced by the prosecution with regard to motive virtually fits in 100%, this theory put forward by the defence is remote and impossible to accept.

10. The law with regard to circumstantial evidence postulates that the chain of circumstances has to be such that each individual link or each circumstance must be individually proved, that it must be strong enough to implicate the accused and that the chain of circumstances must collectively lead to one and only one inference namely the guilt of the accused. Mr. Hulsoor did argue at some length on this aspect of the matter because his contention was that every link admits of some other possibility and his contention was that even taken together that they did not lead to only one conclusion namely the guilt of the accused. On the established facts of this case we find it difficult to accept this argument because the circumstances individually and collectively lead to no inference other than that of guilt as far as both the accused are concerned.

11. Having regard to the aforesaid situation and after a very careful and thorough review of the record, after hearing the learned counsel on both sides both on facts as also on law, we have no hesitation in confirming the finding recorded by the trial Court and confirming the conviction and sentence awarded to both the appellants. The appeal accordingly fails and stands dismissed. The office is directed to pay to learned Advocate Mr. Hulsoor who has assisted the Court by appearing as *amicus curiae* on behalf of the appellants a fee of Rs. 1000/- as and by way of professional charges for having conducted the appeal on behalf of the appellants.

12. The appeal fails and stands dismissed and is accordingly disposed of.